

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

PERMANENT GENERAL ASSURANCE
CORPORATION,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

MARIA LUISA HERNANDEZ,

Real Party in Interest.

G033269

(Super. Ct. No. 02CC05511)

ORDER MODIFYING OPINION;
DENIAL OF PETITION FOR
REHEARING; AND DENIAL OF
REQUEST FOR DEPUBLICATION;
NO CHANGE IN JUDGMENT

It is hereby ordered that the opinion filed on October 12, 2004, be modified as follows:

On page 7, second and third lines, the following sentence is stricken: “The pattern and practice evidence would be irrelevant to and inadmissible for the purpose of assessing punitive damages.” In its place the following is added: “The potential for punitive damages does not by itself make relevant or justify the discovery or admissibility of past instances of conduct toward other insureds. *Campbell* teaches that punishment based on conduct toward others “creates the possibility of multiple punitive

damage awards for the same conduct” (*Campell*, supra, 538 U.S. at p. 410), and such exposure would violate the defendant’s due process rights. As we shall see, however, this limitation on the use of the evidence does not make it universally irrelevant or inadmissible, because conduct toward others may, in an appropriate case, tend to prove the existence of the same conduct toward the plaintiff.”

On page 7, the first full paragraph beginning with the word “However,” the word “However” is stricken and replaced with, “In this case,”.

This modification does not change the judgment.

The petition for rehearing and request for depublication is DENIED.

IKOLA, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

BEDSWORTH, J.